

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )	
FOR REVIEW BY: )	CHARGE NO.: 2009CF2504
)	EEOC NO.: 21BA91170
<b>PEGGIE JONES</b> )	ALS NO.: 09-0596
)	
Petitioner. )	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman, and Charles E. Box presiding, upon Peggie Jones's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>1</sup> of Charge No. 2009CF2504; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

**LACK OF JURISDICTION**

In support of which determination the Commission states the following findings of fact and reasons:

1. On February 17, 2009, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged in her charge that the City of Chicago, Department of Consumer Services ("Employer") laid her off because of her physical disabilities, back disorder (Count A) and tailbone disorder (Count B), in violation of Section 2-102(A) of the Illinois Human Rights Act (the "Act"). On September 15, 2009, the Respondent dismissed the Petitioner's charge for Lack of Jurisdiction. On October 19, 2009, the Petitioner timely filed her Request.
2. The Petitioner worked as a Staff Assistant for the Employer. On April 25, 2008, the Petitioner was injured at work. Thereafter, the Petitioner went on an approved medical leave. As of February 2009, the Petitioner's physician had not released the Petitioner to return to work. Further, the Petitioner admitted that she has been in constant pain and physically unable to work since April 2008.
3. On December 31, 2008, her Employer notified the Petitioner via letter that her position was being removed from its budget, and the Petitioner was laid off effective December 31, 2008.
4. In her charge of discrimination, the Petitioner alleged the Employer laid her off because she is disabled.

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<sup>1</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

5. When the Petitioner filed her charge with the Respondent, the Respondent required the Petitioner to have a physician complete a Medical Questionnaire.
6. In the Medical Questionnaire completed by the Petitioner's physician on March 18, 2009, the Petitioner's physician stated the Petitioner was . . . "unable to work, unable to walk, unable to sit for prolonged period". . . The physician indicated he had last treated the Petitioner on February 23, 2009.
7. In her Request, the Petitioner states she was written out of the Employer's budget and then laid off, but she offers no additional evidence or argument in support of her Request.
8. In its response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge because of lack of jurisdiction. The Respondent argues that the Petitioner was not disabled within the meaning of the Act at the time she was laid off in December 2008 because she was completely unable to perform the essential functions of her job, with or without a reasonable accommodation.

## **CONCLUSION**

The Commission's review of the Respondent's response leads it to conclude that the Respondent properly dismissed all counts of the Petitioner's charge for lack of jurisdiction. If the Petitioner's condition does not meet the definition of disability under the Act, there must be a finding of lack of jurisdiction. See 775 ILCS 5/1-103(l) (West 2010).

Section 1-103(l)(1) of the Act defines "disability" as a "determinable physical or mental characteristic of a person. . ." which is "unrelated to a person's ability to perform the duties of a particular job. . ." 775 ILCS 5/1-103(l)(1).

"A condition is related to a person's ability to perform a job, and is not a [disability], when it results in behavior that fails to meet acceptable business standards, such as absenteeism, or poor quality of production." Peter B. Van Campen and International Business Machines Corporation, IHRC, ALS No. 5127 (June 8, 2000), (2000 WL 33269846, \* 13); see also 56 Ill. Admin. Code § 2500.20(d)(2) (West 2010).

As to both Counts A and B, the Commission concludes that the Petitioner was not a disabled person within the meaning of the Act at the time of the alleged adverse action because the Petitioner's injury rendered her completely unable to perform her job functions, and her condition was therefore related to the Petitioner's ability to perform her job.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

## **THEREFORE, IT IS HEREBY ORDERED THAT:**

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

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*In the Matter of the Request for Review by: Peggie Jones*

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and City of Chicago, Department of Consumer Services as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

**STATE OF ILLINOIS**

**HUMAN RIGHTS COMMISSION**

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**Entered this 12<sup>th</sup> day of May 2010.**

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Charles E. Box